

**North Carolina
Postlicensing Course Syllabus**

**BROKER RELATIONSHIPS
AND RESPONSIBILITIES
COURSE**

January 2013 Edition

**North Carolina Real Estate Commission
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INTRODUCTION

Course Description: The *Broker Relationships and Responsibilities Course* is one of three 30-classroom hour mandatory postlicensing courses that must be completed by newly licensed North Carolina provisional brokers within three years after licensure. The primary objective of the course is to provide instruction at a level beyond that provided in prelicensing courses on topics deemed to be of special importance to licensees. Topics addressed in this course include a review of agency relationships in real estate sales transactions and a real estate agent's legal duties to clients and customers, a step-by-step review and discussion of the functions and responsibilities of a real estate agent when working with residential sellers and buyers, a review of issues associated with transactions in progress when an agent leaves a firm, and a review of license status and education issues.

Requirements for Teaching the Course: This course may only be taught by schools and instructors approved by the North Carolina Real Estate Commission to teach prelicensing and postlicensing courses. Rules governing the conduct of the course, including scheduling, course completion standards, course delivery, course completion reporting and other related matters may be obtained from the Commission. Course must be taught as prescribed by this syllabus.

Prerequisite: Possession of a North Carolina broker license (either provisional or non-provisional).

Textbooks: *North Carolina Real Estate Manual* (most current edition) and the Real Estate Commission's *Residential Square Footage Guidelines* booklet.

Course Final Examinations and Completion Standards: Schools and instructors are required to utilize course final examinations provided by the Commission in accordance with Commission rules for such examinations. The confidentiality of examinations provided by the Commission must be protected at all times by schools and instructors. The **examination minimum passing standard is 75%**. Students must be required to pass the final examination and to satisfactorily complete the prescribed **square footage and comparative market analysis (CMA) mandatory homework exercises** (should involve some class time for introduction of the assignment and review upon completion). Schools and instructors may also, in their discretion, require other special assignments that may count for up to 25% of a student's grade for the course.

Order of Topic Presentation and Recommended Topic Emphasis: *Topics must be presented in the order shown in the outline.* Instructors may make reasonable minor adjustments in subject area emphasis as needed to facilitate instruction, but should be careful not to devote undue overemphasis or underemphasis to any topic.

General Instructional Approach: Instructors are expected to utilize "real world" illustrative examples, to employ instructional techniques that encourage active student participation in class and to employ practical in-class and out-of-class work assignments to the maximum extent possible in this course.

Syllabus Copies: Copies of this syllabus will be provided by the Commission only for use by school officials and instructors. Schools are authorized to reproduce all or part of this syllabus for student use at their own expense, and may charge students for the cost of reproduction.

BROKER RELATIONSHIPS AND RESPONSIBILITIES POSTLICENSING COURSE

RECOMMENDED TOPIC EMPHASIS

	Hours
Section 1: Agency Relationships and Duties – A Practical Review	4
Section 2: Working With Sellers (Residential Sales)	17
Section 3: Working With Buyers (Residential Sales)	5.5
Section 4: Working as a Dual Agent	1.5
Section 5: Other Topics	0.5
Final Examination	1.5
Total Hours	30

Broker Relationships and Responsibilities

Postlicensing Course Outline

References to “Manual” in this outline refer to the North Carolina Real Estate Manual, which is the prescribed text for this course. Page number references to the Manual, 2013-2014 edition, are included with major headings and some selected subheadings.

SECTION 1: Agency Relationships and Duties – A Practical Review (4 Hours) Manual, Chapter 8

I. Duties of Real Estate Agents (2 Hours) (Manual – pages 204-232)

A. Duties to Principal under the Common Law of Agency (Manual - pages 204-217)

1. Basic Agency Duties
 - a. Loyalty and Obedience (including duty of “confidentiality” with regard to information that could be harmful to principal’s interest if disclosed)
 - b. Skill, Care and Diligence
 - c. Disclosure of Information (including discussion with examples of concept of “material fact”)
 - d. Accounting
2. Agent’s Duty to Principal after Termination of Agency Relationship

***Instructor Note:** Instructors should review an agent’s legal duties to his/her principal using primarily a class discussion approach which focuses on common fact situations that illustrate compliance with and violation of each duty.*

B. Duties to Third Persons under the Common Law (Manual - pages 217-218)

1. Honesty
2. Fairness

C. Duties to Principals and Third persons under the Real Estate License Law and Commission Rules (Manual - pages 218-229)

***Instructor Note:** Remind students of the substantial overlap between duties mandated by License Law and Commission rules and duties imposed under the Common Law of Agency. However, many of the duties owed to a principal under the License Law and Commission rules are also owed to a third person.*

1. Miscellaneous Duties.
2. Duty to avoid any willful or negligent misrepresentation or omission.
[G.S. 93A-6(a)(1) and (3)]
 - a. Willful Misrepresentation
 - b. Negligent Misrepresentation
 - c. Willful Omission
 - d. Negligent Omission

Instructor Notes: *Emphasis should be placed on conveying a proper understanding of “misrepresentation” and “omission,” and especially the duty to “discover and disclose” material facts that arises from the duty to avoid making a “negligent omission.” Instructors should utilize primarily a class discussion approach featuring examples that illustrate both compliance and violation of these duties.*

*It also is critical that licensees understand the difference in the standard for determining what information must be disclosed to a **principal** versus what must be disclosed to a **third person** to enhance broker compliance with these duties in actual practice.*

- D. Other Issues Affecting a Real Estate Broker’s Duties (**Manual – pages 229-232**)
 1. Unfair and Deceptive Trade Practices Act
 2. Doctrine of *Caveat Emptor*
 3. Sale of Property “As Is”

II. Agency Relationships in Sales Transactions (½ Hour) (**Manual – pages 196-203**)

Important Note to Instructors. *This edition of the syllabus calls for the option of **working as a dual agent** to be introduced only briefly at this point. Detailed coverage has been moved to a subsequent major section of the syllabus entitled **Working as a Dual Agent**. As a result of this change, the time allotment for Agency Relationships in Sales Transactions has been reduced.*

- A. Agency Options for Real Estate Firms
 1. Seller Agency Only
 2. Buyer Agency Only
 3. Both Seller Agency and Buyer Agency with Dual Agency for “In-House” Sales [Brief introduction only at this point. Covered in depth subsequently in syllabus.]

Discuss each option and the advantages and disadvantages of each.

- B. Agency Relationships When Brokers/Firms Cooperate
 - 1. Cooperating Broker/Firm as Seller's Subagent
 - 2. Cooperating Broker/Firm as Buyer's Agent

III. Disclosure of Agency Relationships in Real Estate Sales (1½ Hour) *(Manual – pages 250-261; see also 2009-10 Real Estate Update Course Materials)*

Important Note to Instructors: *The syllabus calls for in-depth coverage of this topic at this point rather than in Sections 2 and 3. This will hopefully minimize duplication of instruction by not dividing instruction of the disclosure requirements for working with sellers and buyers between Sections 2 and 3.*

- A. The Commission Rule – 58A.0104
- B. *Working with Real Estate Agents* Brochure
- C. “First Substantial Contact”
 - 1. With Seller
 - 2. With Buyer
- D. Disclosure in Various Situations
 - 1. Listing Agent Working with a Prospective Seller
 - 2. Working with a Prospective Buyer
 - 3. Disclosure by Buyer's Agent to Seller/Seller's Agent
 - 4. Disclosure of and Consent to Dual Agency

Instructor Note: *Do not “gloss over” this important requirement or trivialize it as merely a state law requirement. Engage in discussion utilizing “role playing” with the students to teach effective ways to handle this. Extensive class discussion should be utilized to assure a full understanding of when disclosure is required and what constitutes “first substantial contact” in various situations (e.g. in-person contact, telephonic and other electronic contact, open houses, etc.). The primary goal is that the consumer understands as soon as possible that there is no confidentiality between the broker and the consumer unless and until a principal-agent relationship is established.*

SECTION 2: Working With Sellers (Residential Sales) (17 Hours) *(Manual, Chapter 9 – pages 302-325; selected pages in other chapters)*

Important Note to Instructors: *Instructors should be mindful that the purpose of this and other postlicensing or prelicensing courses is to educate a broker in how to work with clients and customers in a manner that complies with the law and good ethical practices and best serves the interests of real estate consumers, not how to be successful in the business. The subjects of “how to” solicit listings (through “farming,” creating referral systems, cold calling, pursuing expired listings, contacting owners of “for sale by owner properties,” personal marketing and websites, etc.), time management, managing data on prospective clients, designing effective marketing, using computers, etc. are beyond the scope of this course. Therefore, **instructors should avoid engaging in “success training” in this course.** However, instructors should certainly urge any new real estate licensee to seriously consider obtaining appropriate training on these subjects in order to enhance their opportunities for success in real estate brokerage practice.*

I. Solicitation of Listings (¼ Hour) (Manual – pages 302-308)

- A. Soliciting Listings of Other Firms/Brokers
- B. “Do Not Call” Laws and Rules
 - 1. Applies to real estate brokers; may not make telephone calls for the purpose of soliciting a listing *to anyone* whose name appears on the “Do Not Call Registry” (with limited exceptions) and caller must check the federal Do Not Call Registry at least once every 31 days.
 - 2. Prohibition includes calls *to solicit listings* made to property owners marketing their property as “for sale by owner” (FSBO) if the owner’s name is on the registry; however, brokers may call a FSBO owner on behalf of a prospective buyer-client who is interested in the FSBO property.
- C. “Do Not Fax” Laws and Rules
- D. “Anti-spam” Laws and Rules. Brokers should keep abreast of any restrictions on email solicitations that might affect their solicitation of business in that manner.

II. Preparing for Prelisting Meeting with Prospective Seller (¼ Hour) *(Manual – pages 308-311)*

- A. Documents to Be Acquired by Listing Agent:
 - 1. Well-drafted listing agreement form (such as NCAR Standard Form 101).
 - 2. The Commission’s *Working with Real Estate Agents* brochure.

3. Copy of the *Residential Property and Owners' Association Disclosure Statement* form (available from Commission's website – REALTORS® may use NCAR Standard Form 140).
 4. Property listing data sheet (if property will be placed in MLS).
- B. Advise Seller to Gather the Following Documents/Information:
1. Copy of Seller's Deed
 2. Copy of Survey
 3. Copy of Restrictive (Protective) Covenants
 4. Copy of HOA Bylaws, Rules and Regulations; Dues and Assessment Info
 5. Balance Due on Seller's Mortgage(s) and Status of Mortgage(s)

Instructor Note: *Explain why it is so important for the listing broker to see all of the above documents/information. For example, the need to check the deed to see who holds title and whether it is fee simple; the importance of checking boundaries indicated by the survey; the need to have the restrictive covenants, bylaws, R&Rs, etc. available to deal with prospect's questions and to know about homeowners' dues; and the importance of knowing the balance due on any existing mortgages as early as possible in the transaction. The broker needs to know early on if he/she might be dealing with a situation where the broker might need to agree to a lower than normal brokerage fee in order to make a deal work, whether a "short sale" situation exists or whether foreclosure is imminent. (Also see Manual – pages 531-535)*

III. Prelisting Meeting with Prospective Seller (1½ Hours) (Manual – pages 311-316; 232-247)

Instructor Note: *Discuss with students appropriate safety measures to take prior to going on a listing appointment.*

- A. Explain Agency Relationship and Company Policies/Services.
1. Make required agency disclosure. Explain the various duties and relationships of real estate agents, *especially an agent's duty to disclose all material facts to all parties*. Simply handing the seller a copy of the brochure and saying you are required to provide it is NOT sufficient!

Instructor Notes: *Agency disclosure to both sellers and buyers was covered in depth in Section 1; however, this should be briefly reviewed here with emphasis on the initial disclosure and explanation of the brochure to the seller. A role-playing technique is suggested with different students explaining various parts of the brochure or different approaches that may be used in order that all students can learn how to comfortably do this. Teach students to approach this as an opportunity to sell their services and impress the prospective seller rather than as burdensome requirement imposed by the state.*

2. Caution seller about providing confidential information to the listing agent (or any other potential listing agent) prior to signing a listing contract and explain why.)
3. Determine if and how the firm will represent the seller (seller's agent only or possibly also as a dual agent).
4. Discuss marketing options. If listing will be placed in MLS, explain briefly how MLS works and its benefits for both sellers and buyers.

Instructor Note: *If class includes students who are not familiar with MLS operations, instructors may need to briefly review in class generally how a typical MLS works and the benefits of using an MLS. MLS operations are addressed later in this section.*

5. Advise seller of firm's proposed brokerage fee for listing and selling the seller's property and negotiate within parameters established by company policy.
- B. Review Documents/Information Obtained from Seller (**Note** that the reasons for reviewing these documents/information were already discussed in II.B. in this section.)
- C. Inspect Property and Verify Questionable Information.

Instructor Note: *This provides an excellent opportunity for an interesting and informative class discussion as to a broker's obligation to discover and disclose material facts and the need for a thorough walk-through. This can be an exceptionally helpful learning experience for students – one that may help them avoid having to deal with unhappy buyers, complaints to the Real Estate Commission and even lawsuits. Many examples should be used and students should be strongly encouraged to participate by sharing experiences or asking questions.*

1. Inspect the property, noting all features that will be needed when preparing the listing data sheet.
2. Identify personal property to be sold and fixtures NOT to be sold.
3. Note all significant defects. Remind seller of agent's duty to disclose all material facts about the seller's property to prospective buyers.
4. Suggest needed repairs and improvements to make the property more marketable.

5. Inquire as to whether any construction/alterations/repairs have been done and whether any required permits were obtained.
6. If property is served by a septic system, verify the system's capacity with the county health department.

D. Advise the seller of the seller's rights and obligations under the **Residential Property Disclosure Act** and assist the seller in fulfilling these statutory obligations. (*Manual – pages 232-242*)

All requirements of the Residential Property Disclosure Act, including the broker's responsibilities, should be addressed at this point.

1. Advise the seller whether the disclosure statement is required (required for the vast majority of single-family residences).
2. Advise the seller of a buyer's three-day right to rescind a sales contract if the seller (or seller's agent) fails to deliver the disclosure statement prior to or at the time the buyer makes an offer.
3. Inform Seller of his/her options in answering and the right to choose "No Representation." Seller is NOT required to make any representations regarding the property's condition.
4. Explain (remind the seller of) a real estate licensee's statutory duty to disclose to any prospective buyer any material fact regarding a listed property about which the agent knows or should reasonably be expected to be aware, *even if the seller chooses not to disclose such material fact or makes no representation regarding the matter.*
5. If the seller demands that the listing agent agree not to disclose a material defect (or other material fact) as a condition of granting the listing, *the listing should be refused!*
6. Assist the seller with understanding how to complete the *Residential Property and Owners' Association Disclosure Statement* form, but allow the seller to complete the form.

Discussion Point: *How to handle a situation where the seller balks at completing the disclosure form or wants to misrepresent a fact about the property and requests the agent's cooperation.*

E. Comply with **Residential Lead-Based Paint Hazard Reduction Act** if applicable. (*Manual – pages 242-247*)
Review the requirements of the act and agents' responsibilities at this point.

- F. Verify the acreage of the lot or tract from seller's deed and/or a current survey and locate corners/lines on the ground if possible.
 - 1. Real estate licensees are NOT expected to measure lots or tracts and calculate the acreage, although licensees should be able to convert acreage to square footage, and vice-versa.
 - 2. Tour the lot or tract with the seller and actually locate corners and property lines if possible in order to avoid subsequently making a misrepresentation to a prospective buyer about such matters.

IV. Verify and Report Building Square Footage in Accordance with Real Estate Commission's *Residential Square Footage Guidelines* (3 Hours)
(Manual pages 314-316, but primarily the Guidelines booklet)

***Instructor Notes:** Even though licensees are not required by Commission rules to report square footage of an improvement, they nonetheless are expected to possess the expertise necessary to accurately measure, calculate and report the square footage of most buildings. Review thoroughly the Commission's **Residential Square Footage Guidelines**, including the illustrations, at this point in the course.*

***Mandatory Student Homework Assignment.** Students must be required to independently complete an exercise in determining square footage in order to satisfactorily complete the course. The problem in the **Guidelines** booklet may be utilized as part of in-class instruction, but should not be used for the homework assignment since the booklet also includes the solution to this problem. Instructors must provide students with diagrams and measurements for one or two other houses and have students perform the calculations as a homework assignment. Students' results can then be reported in a later class (not necessarily the next class) and common mistakes discussed. Reserve a portion of the allotted classroom time for this purpose. Students should be provided the correct solution. If feasible, a "field trip" (e.g., to a building near the classroom) involving on-the-ground measurements is recommended.*

V. Perform a Comparative Market Analysis (CMA) for the Seller (7 Hours)
(Manual, pp. 316-317; 592; 603-611; 618-619; 622-641)

- A. Laws and Rules Governing Broker Price Opinions (BPOs) and Comparative Market Analyses (CMAs) Performed by Real Estate Brokers **Effective October 1, 2012. [Article 6 of the Real Estate License Law and Commission Rules Section A.2200 and Rule A.0108] (Manual – pages 622-632)**
 - 1. Law and Practice Relating to CMAs/BPOs Prior to October 2012
 - 2. Summary of Major Law Changes - *Emphasize these major points!*

3. Review Complete Text of Article 6 of License Law and Relevant Appraisers Act Provisions
 4. Review and Discuss Commission Rules (Section A.2200 and Rule A.0108)
- B. Agent's Duty with Regard to Providing a CMA/BPO to a Client (*Manual – pages 632-634*)
1. Duty under the Law of Agency
 2. Duty under the License Law
 3. CMA/BPO of:
 - a. Residential 1-4 Unit Properties
 - b. Residential 5+ Unit Properties and Other Income-Producing Properties
- C. Performing a CMA/BPO (*Manual – pages 634-636*)
1. Steps in the CMA/BPO Process
 - a. Assuring the Broker is Qualified
 - b. Identifying the Assignment
 - c. Collecting Data on Subject and Local Market
 - d. Analysis Using the Sales Comparison Approach

Instructor Note: *At this point, the instructor should thoroughly review the methodology of the **Sales Comparison Approach** that is addressed on pages 603-611 of the **Manual**, as well as the material on pages 635-636 and the **Sales Comparison Analysis Illustration** on pages 640-641 at the end of Chapter 15.*

- e. Analysis Using the Gross Rent Multiplier Approach (*Manual – pages 618-619; 636*)

Instructor Note: *At this point, the instructor should thoroughly review the methodology of the **Gross Rent Multiplier Approach** that is addressed on pages 618-619 of the **Manual**, as well as on page 636.*

- f. Analysis Using the Income Capitalization Approach

Important Instructor Note: *DO NOT COVER THE INCOME CAPITALIZATION APPROACH IN THIS COURSE! Instruction on the methodology of the **Income Capitalization Approach** that is addressed on pages 619-621 of the **Manual**, as well as the material on pages 636-637, will be included in the "Introduction to Commercial Real Estate*

*Brokerage” portion of the **Selected Topics Postlicensing Course** and should not be covered in this course.*

- g. Analysis Relating to Estimating a Probable **Leasing** Price (Lease Rate) (*Manual - page 637*)
- h. Expectations for Brokers Performing BPOs/CMAs with Regard to Selecting and Making Adjustments to Comparables as Compared to the standards for Appraisers Performing an Appraisal (*Manual - pp. 637-8*)
- i. Reporting Probable Selling/Leasing Price as a “Range” (*Manual – page 638*)
- j. The BPO/CMA Report (*Manual – pages 638-639*)
- k. Important Reminder about CMAs/BPOs Provided for **No Fee** (*Manual - page 639*)

Mandatory Student Homework Assignment. *Students must be required to independently complete at least one CMA of a single-family property as a mandatory homework assignment in order to satisfactorily complete the course. Because some students may not have access to MLS data, instructors should develop at least one exercise that involves the instructor providing data on the subject property and a substantial number (e.g., 8-10) of potential comparables. Have the students prepare a CMA as a homework assignment and then utilize a subsequent class session (not necessarily the next class) to have students present their CMA reports, which will be critiqued and discussed in class. Reserve a portion of the allotted classroom time for this purpose. The instructor should have a best solution to provide to the students following the class discussion.*

VI. Assist the Seller in Setting an Appropriate Listing Price (1 Hour) **(Manual - pages 317-320)**

- A. Advise the Seller as to Appropriate Listing Price – Factors to Consider
 - 1. Estimated probable selling price (or range) of property (per CMA).
 - 2. Current market conditions.
 - 3. Pros and cons of setting listing price at “high” vs. “low” end of range of estimated value.
 - 4. Seller’s needs and desires.
 - 5. Possibility of “Short Sale” situation. (*Manual, pp. 318; 531-535*)

Instructor Note: *Involve students in a discussion of the practical considerations in setting a listing price. Use examples.*
- B. Review How to Estimate Seller’s Net Proceeds
Instructor Note: *After reviewing this calculation, students should be assigned practice problems to assure they have mastered the calculation.*

- C. Review How to Calculate a Seller's Net Profit
***Instructor Note:** After reviewing this calculation, students should be assigned practice problems to assure they have mastered the calculation.*

VII. Review and Complete the Listing Contract (1 Hour)
(Manual - pages 264-266; 282-299)

- A. General Requirements for All Agency Contracts [See Commission Rule 58A.0104(a) and (b).] *(Manual – pages 264-266)*
1. Listing contracts must be in writing from the outset of the relationship. Oral listing agreements are unlawful in NC.
 2. Listing contracts must also:
 - a. have a definite expiration date;
 - b. contain the anti-discriminatory language prescribed by rule; and
 - c. be signed by the parties and include the listing licensee's license number.
- B. Listing Contract Provisions – Standard “Full-Service” Listing Contract
(Manual – pages 282-290)

Instructor Notes: *Instructors should perform a detailed line-by-line review of NCAR Standard Form 101 – Exclusive Right to Sell Listing Agreement that is included on pages 283-290. Make sure students understand each provision and the reason for its inclusion. Discuss how agents might explain and discuss with sellers each of the various contract provisions. Address appropriate entries for various common circumstances.*

- C. Selected Points about Listing Contract Completion *(Manual – pages 320-321; 291)*
1. When to complete the listing contract.
 2. All provisions should be filled in prior to having the seller sign. Seller should not be asked to sign an incomplete listing contract (for example, one without the listing price filled in).
 3. Names and Signatures
 - a. All co-owners should sign!
 - b. Where one spouse is the owner, best practice is still to have the non-titled spouse also sign.
 - c. Listing agent signs on behalf of his/her firm and includes his/her license number.
 4. Provide seller a copy of the signed listing agreement.
- D. Additional Good Practice: Provide seller with a copy of the standard Offer to Purchase and Contract form at this time and familiarize seller with major provisions so seller knows what to expect when an offer is received.

VIII. Working as a Limited Services Broker (¼ Hour) (Manual - pages 279-282)

- A. Limited Services Listing Contract – Common Approaches
- B. Duties of Limited Services Listing Broker under the Real Estate License Law, Commission Rules and the Common Law of Agency

IX. Submitting Property Data to MLS; MLS Operations; Antitrust Laws (¼ Hour) (Manual, pp. 321, 300-302)

- A. The Commission will hold a listing agent personally responsible for the accuracy of property data reported in MLS. This responsibility cannot be delegated. A mistake made by an assistant or secretary will not excuse the listing agent from responsibility. (Manual - page 321)
- B. Overview and discussion of typical MLS operational rules. [Mandatory training on MLS use is standard among the various MLS operations.] (pages 300-301)
- C. Antitrust Laws (Manual - pages 301-302)

X. Marketing Listed Property (2 Hours) (Manual - pages 321-323; 500-502)

***Note:** The subject of how to effectively market property for sale is beyond the scope of this course; however, instructors should recommend that any new licensee consider obtaining training on effective real estate marketing, including the use of the Internet.*

- A. Legal Compliance in Marketing/Advertising (Manual - page 321)
 - 1. Signage and blind ads
 - 2. Comply with advertising requirements of Truth in Lending Laws. (Manual - pages 500-502) Discuss “trigger terms,” what they are, what disclosures they trigger and how to avoid violating Regulation Z.
 - 3. Fair Housing Considerations in Advertising: **Note:** Brief mention here. This is also covered in more depth in the **Selected Topics** postlicensing course.
 - 4. Internet Advertising – Same rules apply
- B. Fulfilling Listing Agent’s/Firm’s Agency and Contractual Duties Relating to Marketing a Property (Manual - pages 322-323)

***Note:** This coverage focuses on the duty of a listing agent to his/her seller-principal under agency law to exercise “skill, care and diligence” in the performance of his/her contractual obligation under a typical “full-service” listing contract such as NCAR’s Exclusive Right to Sell Listing Agreement (Standard Form 101) to exercise his/her best efforts to find a buyer for the seller’s property. This discussion assumes that the seller has not restricted the listing agent/firm with regard to marketing of the property – in other words, that the*

seller has not prohibited the listing agent/firm from taking such actions as placing a “for sale” sign on the property, placing the listing in a listing service, cooperating with agents of other firms, etc.

1. Review customary practices.
2. Other Points to Consider – *Caution:*
 - a. A listing agent might want to obtain permission from his/her seller-client prior to using photographs (or videos) of the inside of a seller’s home in advertising (e.g., in flyers, on websites, etc.).
 - b. Providing Copy of Seller’s Survey with Promotional Flyer: While this common practice is not objectionable, agents working with buyers should make certain this does not mislead buyers into thinking they should not obtain a survey.
3. Educating Sellers on their Role

XI. Working with a Seller/FSBO as a Buyer’s Agent (½ Hour) ***(Manual - pages 323-325)***

- A. Acting as Buyer’s Agent Only. Agent is required to provide and explain *Working with Real Estate Agents* brochure and fully disclose status as buyer’s agent. [See Commission Rule 58A.0104(c) and (f).]
- B. Acting as Disclosed Dual Agent.
- C. Buyer agent working with a seller who listed with a limited services broker.

SECTION 3 – Working with Buyers – Residential Sales (5½ Hours) ***(Manual - pages 325-347)***

I. Agency Disclosure to Buyers – Basic Requirements (½ Hour) ***(Manual - pages 325-326 and See Commission Rule 58A.0104(c))***

Instructor Note: Agency disclosure to both sellers and buyers was covered in depth in Section 1; however, the topic should be briefly reviewed here with an ***emphasis on explaining the brochure to a buyer.*** Suggest using role-playing techniques to involve students in practicing the disclosure and explanation of agency relationships. Students need to be comfortable in handling this disclosure.

II. Working with Buyers as Seller's Agent or Subagent (½ Hour)
(Manual - pages 326-327)

- A. Disclose and Document Agency Relationship ***in writing***. Use the *Working with Real Estate Agents* brochure for this purpose.
- B. Co-brokerage Subagency Situations.
- C. In-house Situations.
- D. Switching from seller's subagent to buyer's agent requires seller's consent.

III. Working with Buyers as a Buyer's Agent (2 Hours)
(Manual - pages 327-344)

- A. Basic Requirement for ***Express*** Agreement from the outset of the relationship.
(Manual - page 327)
- B. Temporary Oral Buyer Agency Agreement Option *(Manual - pages 328-330)*
 - 1. Requirements for temporary oral buyer agency agreement:
 - a. must be *non-exclusive*; buyer may work with multiple agents
 - b. may NOT bind the buyer for any specific period of time
 - 2. Must be reduced to writing no later than the time an offer to purchase is made.
Discuss also the hazards of preparing an offer on behalf of a buyer-client prior to the buyer-client signing a written agency agreement, as the broker would be precluded from presenting that offer without a written agency agreement. Discuss how to handle such a situation.
- Instructor Notes:*** *Instructors should engage students in a discussion of their experiences with buyers who are reluctant to sign a written agreement and how they were able to successfully deal with the situation.*
- 3. Switching from buyer's agent to seller's subagent
- C. Summary of Essential Elements of a Written Buyer Agency Agreement *(Manual - page 330)*
- D. Types of Buyer Agency Agreements *(Manual - pages 331- 341)*
 - 1. Exclusive Buyer Agency Agreement [See NCAR Standard Form 201, ***pages 332-336***, and 201-G – Guidelines for Completing the Exclusive Right to Represent Buyer Form]

2. Non-Exclusive Buyer Agency Agreement [See NCAR Standard Form 203, *pages 338-340*]

***Instructor Notes:** Instructors should perform a detailed line-by-line review of these forms and completion guidelines, discussing appropriate completion of each provision in various circumstances.*

3. Alternate Options for Working with Buyers (*page 341*)
 - a. Limit duration of agreement
 - b. Limit agreement to specific properties
- D. Duties to Buyer of Buyer's Agent versus Seller's Subagent Working with a Buyer (*Manual - pages 342-344*)

***Instructor Notes:** Extensive discussion and use of examples will be needed to assure student understanding of the respective duties of a buyer's agent versus a seller's subagent working with a buyer.*

IV. Practices of Agents Working With Buyers (2½ Hours) (*Manual - pages 345-347 and other pages noted below*)

- A. Comply with Agency Disclosure and Buyer Agency Contract Requirements

***Instructor Note:** Both these topics have been covered previously in this course. Briefly remind student of these requirements here and move on.*

- B. Educating Buyer and Soliciting Information on Buyer's Needs and Desires

***Instructor Note:** Advise students of the special importance of educating first-time homebuyers. Emphasize importance of inquiring about a buyer's specific housing needs and desires **only after** agency disclosure is made **and** an agreement is reached on how the agent/firm will work with the buyer. Advise them to **never** show a listed property or question a prospective buyer about specific housing needs, financial status or other personal information until these steps are completed.*

- C. Qualifying the Buyer (*Manual, Ch. 13 - pages 510, 513-514, 519-20*)

***Instructor Note:** Students should be reminded of the merits of "qualifying the buyer" to avoid wasting the time of the buyer, the agent, listing agents and sellers. Referral to a mortgage lender for loan qualification/approval is a common and perfectly appropriate practice. However, even if a prospective buyer is referred to a mortgage lender for qualification, brokers are expected to*

have a good understanding of loan application/qualifying requirements and procedures. Thus, brokers should possess the ability to independently “prequalify” a buyer using the general adequacy of income standards for conventional/conforming loans and FHA loans (also VA loans in areas where these are common). “Prequalification” means estimating the maximum loan amount a buyer is likely to be eligible to obtain and, given the buyer’s assets, the approximate purchase price the buyer can afford. Instructors should teach loan prequalification procedures (for a conventional-conforming loan) and have students work sample prequalification problems sufficient to assure the students’ competence in prequalifying buyers in common situations.

D. Perform a Comparative Market Analysis (CMA) for Buyer

Instructor Note: *This topic has been previously covered in this course. Preparing a CMA for a buyer-client is one of the most important services a buyer’s agent can provide to the client.*

E. Discover and Disclose Material Facts

Instructor Note: *This topic should have been previously covered in this course. If a **buyer agent’s duties** to discover and disclose material facts were not adequately covered previously, do so here.*

F. Check Land Use Restrictions and Compliance with Related Requirements

1. Protective (Restrictive) Covenants (***Manual – pages 176-178***)
2. Zoning (***Manual – page 144***)
3. Flood Hazard Area (***Manual – page 173***)
4. Check Septic System’s Authorized Capacity (if applicable) (***Manual – Page 546***)
5. Inquire about Permits for Renovations, Additions, Major Repairs (***Manual – page 545***)

Instructor Note: *Remind students to avoid making any unverified representations regarding any of the above matters. Buyer’s agent should recommend that buyer obtain and review any protective covenants and homeowners’ association bylaws regarding a property prior to buyer making an offer on the property and assist the buyer in obtaining such information if requested by the buyer.*

G. Additional Buyer Agent Responsibilities and Practices [**Covered in Contracts and Closing postlicense course**]

Instructor Note on Additional Buyer Agent Responsibilities and Practices:
*Additional responsibilities of a buyer agent working with a buyer that are related to preparing an offer to purchase, handling contract matters, assisting with a buyer's "due diligence," preparing for closing and assisting with closing will be addressed in the postlicensing course on **Contracts and Closing**.*

SECTION 4 – Working as a Dual Agent (1½ Hours) **(Manual - pages 348-358)**

I. Review of Dual Agency Basics (Manual – pages 349-350)

- A. Requirements for Brokers in Dual Agency Situations
 - 1. Disclosure and consent
 - 2. Requirement for written agreement (with oral agreement permitted in certain situations) [*Commission Rule 58A.0104(d)*]
 - 3. Authorization of dual agency in listing and buyer agency agreements
 - a. Advance consent by both seller and buyer
 - b. Advance consent by one party only
 - c. No advance consent by either party
- B. The Conflicting Duties of a Dual Agent

II. Dual Agency Solutions (Manual – pages 350-358)

- A. Limiting the Dual Agent's Duties by Contract
 - 1. Limiting disclosure of certain information to principals
 - 2. Limiting the duties of loyalty and skill, care and diligence
 - 3. Effect of this approach

Instructor Notes: Review appropriate provisions in the NCAR standard listing and buyer agency agreement forms.

- B. Designated Agency [*Commission Rule 58A.0104(j)-(m)*]
 - 1. Basic concept
 - 2. Major rule provisions
 - 3. Special features of designated agency
 - 4. Protecting confidential information in general, and small office considerations
- C. Individual Broker Dual Agent [*Commission Rule 58A.0104(n)*]

- D. Alternatives to Dual Agency in Other States
- E. Dual Agency Agreement without Pre-existing Agency Relationship

SECTION 5 – Miscellaneous Related Issues (½ Hour)

I. When Agents Leave/Change Firms (¼ Hour)

- A. Required Notice to Commission within 10 days (*See Commission Rule A.0103.*)
- B. Handling of Transactions in Progress (*See Manual – pages 843-844 for discussion of compensation of licensees when leaving/changing firms.*)

II. License Status and Education Issues (¼ Hour)

See most recent Real Estate Update course materials, as well as GS 93A-4 and Commission rules A.0503, A.0504, A.0505, and A.0506 in Appendices A & B.

- A. License Status: Meaning of provisional broker, active, inactive, expired, suspended, revoked, and canceled status.
- B. Postlicensing Education Requirement (and consequences of failure to satisfy)
- C. Continuing Education Requirement (and consequences of failure to satisfy)
- D. Requirements and procedures to activate an inactive license
- E. Requirements and procedures to reinstate an expired license
 - 1. License expired for not more than 6 months
 - 2. License expired for more than 6 months

End of Syllabus